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July 30, 2024

Honorable Sanket J. Bulsara, U.S.M.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Biofer S.p.A. v. Vifor (International) AG*, No. 1:22-cv-02180-AMD-SJB (E.D.N.Y.)

Dear Judge Bulsara:

Plaintiff Biofer S.p.A. (“Plaintiff” or “Biofer”) submits this Amended Motion to Seal pursuant to the Court’s July 10, 2024 Order (Dkt. 147) regarding the prior filings of Biofer, *i.e.*, DI 94, 106, 108, 121, and 127 (collectively, the “Briefings”). Plaintiff has conferred with Defendant Vifor (International) AG (“Defendant” or “Vifor”) and the parties submit herewith amended filings containing narrow redactions to only competitively sensitive specific confidential business information.

In the Second Circuit, the presumption of public access to judicial documents can be overcome if countervailing factors warrant confidentiality. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006). Sealing of records may be justified to preserve “higher values,” including the need to protect an entity from competitive injury. *Lugosch*, 435 F.3d at 124. Courts routinely permit parties to seal or redact commercially sensitive information to protect confidential business interests and financial information. *See, e.g., Rubik’s Brand Ltd. v. Flambeau, Inc.*, No. 17-CV-6559 (PGG) (KHP), 2021 WL 1085338, at *1 (S.D.N.Y. Mar. 22, 2021). As set forth in detail below, the redacted information concerns: (1) Vifor’s confidential manufacturing process and related regulatory filings, (2) Vifor’s confidential contracts/agreements with its partners, and (3) Biofer’s confidential contracts/agreements with its partners. As detailed below, this information is appropriately and narrowly redacted because it contains “specific business information and strategies” which if revealed would “provide valuable insights into a company’s current business practices that a competitor would seek to exploit.” *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015).

Dkt. 93-1 (Biofer’s 10/6/23 Response to Vifor’s Request for Conference): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and the redacted version provided here includes Vifor’s amended redactions. The redacted sections contain

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details of Vifor's confidential, non-public contracts and agreements with its partners relating to marketing/advertising strategies.

Dkt. 106-1 (Biofer's 12/1/23 Motion to Compel): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and the redacted version provided here includes Vifor's amended redactions. The redacted sections contain "sensitive or proprietary technical" information, namely Vifor's confidential information related to the specifics of its manufacturing process and parameters. *Uni-Sys., LLC v. U.S. Tennis Ass'n Inc.*, No. 17 CV 147 (KAM) (CLP), 2018 WL 6179433, at *7 (E.D.N.Y. Nov. 27, 2018); *Spectrum Dynamics Med. Ltd. v. General Elec. Co.*, No. 18-CV-11386 (VSB) (KHP), 2022 WL 3910584, at *1 (S.D.N.Y. Aug. 31, 2022).

Dkt. 106-2 (Biofer's 12/1/23 Motion to Compel, Ex. 4, Myerson Declaration): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and the redacted version provided here includes Vifor's amended redactions. As set forth above, the redacted sections also contain "sensitive or proprietary technical" information, namely Vifor's confidential information related to the specifics of its manufacturing process and parameters. *Uni-Sys., LLC*, 2018 WL 6179433, at *7; *Spectrum Dynamics*, 2022 WL 3910584, at *1.

Dkt. 106-3 (Biofer's 12/1/23 Motion to Compel, Ex. 5, Vifor Protocol): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and the redacted version provided here includes Vifor's amended redactions. As set forth above, the redacted sections also contain "sensitive or proprietary technical" information, namely Vifor's confidential information related to the specifics of its manufacturing process and parameters. *Uni-Sys., LLC*, 2018 WL 6179433, at *7; *Spectrum Dynamics*, 2022 WL 3910584, at *1.

Dkt. 106-4 (Biofer's 12/1/23 Motion to Compel, Ex. 7, Vifor Data): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and Vifor asserts that this document should be filed under seal. Specifically, this document contains in its entirety confidential, non-public data concerning Vifor's confidential, non-public manufacturing process.

Dkt. 106-5 (Biofer's 12/1/23 Motion to Compel, Ex. 12, Vifor Discovery Responses): Biofer has conferred with Vifor, and the parties withdraw all redactions, and this document has been refiled publicly.

Dkt. 108-1 (Biofer's 12/4/23 Response to Motion to Compel, Ex. 1): Biofer has conferred with Vifor, and the parties withdraw all redactions, and this document has been refiled publicly.

Dkt. 121-1 (Biofer's 2/23/24 Motion to Compel): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and the redacted version provided here includes Vifor's amended redactions. As set forth above, the redacted sections also contain "sensitive or proprietary technical" information, namely Vifor's confidential information related to the specifics of its manufacturing process and parameters. *Uni-Sys., LLC*, 2018 WL 6179433, at *7; *Spectrum Dynamics*, 2022 WL 3910584, at *1.

Dkt. 121-2 (Biofer's 2/23/24 Motion to Compel, Ex. 9, Vifor Protocol): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and the redacted version provided here includes Vifor's amended redactions. As set forth above, the redacted sections also contain "sensitive or proprietary technical" information, namely Vifor's confidential information related to the specifics of its manufacturing process and parameters. *Uni-Sys., LLC*, 2018 WL 6179433, at *7; *Spectrum Dynamics*, 2022 WL 3910584, at *1.

Dkt. 127-1 (Biofer's 3/5/24 Motion to Compel): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and the redacted version provided here includes Vifor's amended redactions. As set forth above, the redacted sections also contain "sensitive or proprietary technical" information, namely Vifor's confidential information related to the specifics of its manufacturing process and parameters. *Uni-Sys., LLC*, 2018 WL 6179433, at *7; *Spectrum Dynamics*, 2022 WL 3910584, at *1.

Dkt. 127-2 (Biofer's 3/5/24 Motion to Compel, Ex. 5, Charles Goulburn Deposition Excerpts): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and the redacted version provided here includes Vifor's amended redactions. The redacted sections contain deposition testimony regarding Vifor's confidential, non-public contracts and agreements with its partners and internal operations.

Dkt. 127-3 (Biofer's 3/5/24 Motion to Compel, Ex. 6, Bauer Declaration): Biofer has conferred with Vifor, and the parties withdraw all redactions, and this document has been refiled publicly.

Dkt. 127-4 (Biofer's 3/5/24 Motion to Compel, Ex. 9, Biofer confidential agreement): Biofer provides herein amended redactions to this document. The redacted material describes the details of Biofer's confidential, non-public agreements with partners. This information is extremely business sensitive, and not known to Biofer's competitors. It is critical to maintain the confidentiality of this information for Biofer's business operations.

Dkt. 127-5 (Biofer's 3/5/24 Motion to Compel, Ex. 10, Biofer confidential communications): Biofer provides herein amended redactions to this document. As set forth above, the redacted material describes the details of Biofer's confidential, non-public agreements with partners. This information is extremely business sensitive, and not known to Biofer's competitors. It is critical to maintain the confidentiality of this information for Biofer's business operations.

Dkt. 127-6 (Biofer's 3/5/24 Motion to Compel, Ex. 13, Andre Fischer Deposition Excerpts): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and the redacted version provided here includes Vifor's amended redactions. As set forth above, the redacted sections also contain "sensitive or proprietary technical" information, namely Vifor's confidential information related to the specifics of its manufacturing process and parameters, and regulatory filings. *Uni-Sys., LLC*, 2018 WL 6179433, at *7; *Spectrum Dynamics*, 2022 WL 3910584, at *1.

Dkt. 127-7 (Biofer's 3/5/24 Motion to Compel, Ex. 14, Erik Philipp Deposition Excerpts): This document does not include any confidential information from Biofer. Biofer has conferred with Vifor, and the redacted version provided here includes Vifor's amended redactions. As set forth above, the redacted sections also contain "sensitive or proprietary technical" information, namely

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Vifor's confidential information related to the specifics of its manufacturing process and parameters, and regulatory filings. *Uni-Sys, LLC*, 2018 WL 6179433, at *7; *Spectrum Dynamics*, 2022 WL 3910584, at *1.

Dkt. 127-8 (Biofer's 3/5/24 Motion to Compel, Ex. 15, Stefan Heitner Deposition Excerpts): Biofer has conferred with Vifor, and the parties withdraw all redactions, and this document has been refiled publicly.

Because the above documents contain highly confidential business information and have been narrowly redacted to allow appropriate disclosure of non-confidential portions of the document in accordance with this Court's Order and *Lugosch*, Biofer respectfully requests that the Court grant Biofer's amended motion to seal.

Respectfully submitted,

/s/ Jonathan D. Ball

Jonathan D. Ball
Shareholder